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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 67/2006

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

Appellant
Plaintiff

Kodiya Bai, aged about 26 years D/o Shri Ram kawar by Occupation Agriculturist, R/o Aaledand, Tahsil Dongargarh Distt. Rajnandgaon

Versus

Respondents
Defendants

1a. Rakjkumar, aged about 25 years S/o Itwari
1b. Malkham aged about 23 years S/o Itwari
1c. Radha Bai aged about 22 years D/o Itwari
1d. Radhika Bai aged about 18 years D/o Itwari
1e. Urmila Bai aged about 55 years W/o Itwari
2. Samaru aged about 39 years S/o Shirish
3. Sakalu aged about 35 years S/o Shirish
4. Barsan aged about 30 years S/o Shirish
All R/o Village Aaledand, Tahsil Dongargarh, Distt. Rajnandgaon
5. The State of Chhattisgarh through Collector, Rajnandgaon

Present: Shri Parag Kotecha with Shri Anand Shukla, learned counsel for the appellant.
Shri Akhil Agrawal, PL for State.

ORAL JUDGMENT
(Passed on 15th March, 2007)

The following oral judgment of the Court was passed by Dilip Raosaheb Deshmukh, J.

Heard on admission.

1. The appellant/plaintiff is aggrieved by the judgment and decree dated 30.11.2005 passed by the District Judge, Rajnandgaon in Civil Appeal No. 23-A of 2005 whereby the judgment and decree passed by the Civil Judge Class-I, Dongargarh in Civil Suit No. 10-A of 1980 dismissing the plaintiff's suit was affirmed.

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2. The plaintiff Kodiya Bai had filed a Civil Suit No. 10-A of 1980 on the ground that after death of her grand-father Paltan, there was an oral partition between her father Sriram Kanwar and her uncle Shirish Kumar, in which the suit lands had fallen to the share of Ram Kanwar. Sriram had died during the rule of erstwhile ruler of Khairagarh State and Fatkan Bai, mother of the plaintiff had also re-married. After the death of Paltan, the name of Sriram and Shirish Kumar was jointly entered over the suit lands. Three years prior to the institution of the suit, Shirish Kumar had cut the Teak trees standing on suit lands. Thereafter the appellant filed an application before the Naib Tahsildar for separating the *Khata* which was rejected. Hence, the suit.

3. Learned counsel for the appellant did not dispute that the appellant has not been able to establish that after the death of Paltan, there was an oral partition in which the suit lands had fallen to the share of Sriram. He also does not dispute that after the death of Sri Ram, his wife Fatkan Bai had remarried.

4. There is a concurrent finding recorded by both the Courts below that Sriram, father of the appellant, had died during the period of the erstwhile ruler of Khairagarh State and under the Wajib-ul-Arz Rules, Fatkan Bai, mother of the appellant, having remarried had absolutely no right or title to the suit property.

5. Having considered the facts not disputed by the learned counsel for the appellant and after perusing the impugned order passed in First Appeal as also the order passed by the learned lower Court, I fully concur with the findings recorded by the lower Court and affirmed by the 1st Appellate Court which are based on proper appreciation of evidence both oral as well as documentary and are in conformity with law, I am of the considered opinion that no substantial question of law arises for determination in this appeal.

6. This appeal is dismissed at the stage of admission. In view of the above, M.C.P. No. 1966/2006 stands disposed of. There shall be no order as to costs.

Sd-/
Dilip Raosaheb Deshmukh
Judge